

Before the
Federal Communications Commission

Washington, D.C. 20554

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SEP 13 1996

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations,
(Moncks Corner, Kiawah Island, and
Sampit, South Carolina)

)
)
) MM Docket No. 94-70
) RM-8474
) RM-8706
)
)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RECONSIDERATION

Sampit Broadcasters ("SB"), pursuant to Section 1.429 of the Rules, hereby respectfully seeks reconsideration of the Commission's *Report and Order*, DA 96-1149, 61 Fed. Reg. 42228, published August 14, 1996 (the "*R&O*")¹. SB requests the Commission to (a) allot FM channel 289A to Sampit, South Carolina, as counterproposed by SB, and to (b) affirm the aspects of the *R&O* that denied the petition for rule making seeking the reallocation of Channel 287C3 from Moncks Corner to Kiawah Island, South Carolina as Channel 288C2. In support of this petition, SB shows the following :

¹ This Petition is timely filed within 30 days following publication of the *Report and Order* in the *Federal Register* on August 14, 1996. See §1.429(d) and §1.4(b)(1) of the Rules (public notice is given for documents in notice and comment rule making proceedings, including summaries thereof, on the date of publication in the *Federal Register*).

Background

At the request of the former licensee of WNST(FM), Moncks Corner, South Carolina, the Commission issued a *Notice of Proposed Rule Making*, 9 FCC Rcd 3136 (1994), proposing the substitution of Channel 288C2 for Channel 287C3, the reallocation of the channel from Moncks Corner to Kiawah Island, South Carolina, and the modification of WNST's license to operate on Channel 288C2. The licensee of WNST is now L. M. Communications II of South Carolina, Inc. ("LMC"). LMC is the successor to the original petitioner. SB timely filed comments and a counterproposal which proposed, *inter alia*, the allocation of Channel 289A to Sampit, South Carolina, as its first local service. Numerous related pleadings were filed by both parties, culminating in the *R&O*. In the *R&O*, the Commission denied both LMC's and SB's proposals.

On August 19, 1996, counsel for LMC filed a petition for reconsideration of the *R&O*. Time has not yet expired for filing an opposition to that petition.²

The Commission Properly Denied LMC's Petition

In its *R&O*, the Commission found, quite properly, that LMC's proposal was technically deficient. The Commission's engineering analysis determined that although the entire usable area for Channel 288C2 is approximately 130 square kilometers (50 square miles), it appears that the area is marshy and close to an airport. The Commission does not consider a marshy area to constitute an available site as it believes it is doubtful

² See §1.429(e) and §1.4(b)(1) of the Rules and *Public Notice*, Report No. 2150, published September 5, 1996. (Oppositions must be filed within 15 days of the date of public notice of the petition in the Federal Register.)

that permission would be granted for a transmitter site in any of the area. Further, the FCC stated that the Federal Aviation Administration ("FAA") has advised it that it is unlikely that a 150 meter (492 feet) tower, or even a 50 meter (164 feet) tall tower would be approved at the proposed site because of its proximity to an airport, as well as the possibility that the area may be too marshy for construction. Since no suitable site appeared to be available, the Commission determined that it could not allot Channel 288C2 to Kiawah Island. The Commission, thus, never considered SB's submissions showing that LMC's proposal is really a proposal for Charleston, South Carolina -- not Kiawah Island. Since SB agrees that the FCC should not allot Channel 288C2 to Kiawah Island, SB's instant petition is limited to seeking reversal of the portion of the Commission's *R&O* that refused to allot FM Channel 289A to Sampit as its first local service.

Sampit, South Carolina, Is a "Community" for Allotment Purposes

Sampit Businesses. The Commission (at *R&O* ¶17) stated its belief "based upon the record before us, Sampit is not a 'community' for allotment purposes." Although SB listed thirty-nine entities (businesses, churches, an elementary school, and civic organizations), the Commission faulted SB for not giving the addresses of the entities verifying that they specifically identify themselves with Sampit or showing that they intend to serve the needs of Sampit as opposed to the neighboring communities of Georgetown or Andrews, South Carolina, which already have local radio service.

Presumably, in rejecting SB's evidence as to the thirty-nine Sampit entities based on the lack of the addresses of these entities, the FCC did not do so as the result of a finding of lack of credibility, but rather one of SB's not providing enough information to fulfill an unannounced technical requirement, i.e., one of sufficiency of the evidence. In so doing, the Commission relies on its decision in *Coker, Alabama*, 43 RR 2d 190 (1970) ("*Coker*"). SB submits that *Coker* supports the opposite legal proposition. In *Coker*, at p. 193, n.5, the Commission rejected as not proving anything the mere existence (and *ergo* presumably the absence) of a post office bearing the name of the proposed community of license - "although we are able to confirm the existence of a post office at Coker, this fact does not necessarily reflect that the location was chosen to serve residents of a specific community."³ As the fact that Sampit residents are served by the Georgetown, South Carolina, post office does not make them Georgetown residents. In the absence of the rejection of the proffered evidence on the basis of credibility, apparently the FCC has raised post office assigned addresses to the level of evidence rejected in *Coker*, i.e., that the post office's existence proves the community's existence.

While, there is, to counsel's knowledge, no requirement that such information as to street addresses be provided; in order to resolve any lingering doubts, attached hereto (Attachment 1) are declarations under penalty of perjury from the following persons who

³ In this regard, counsel for SB fully agrees. For example, until recently residents of the area of Bethesda, Maryland, bordering the District of Columbia were served by the Friendship Heights, D.C. post office and therefore had District of Columbia zip codes. This did not make them District of Columbia residents.

state that they operate a business in Sampit that identifies with Sampit and that intends to serve the needs of Sampit as opposed to other communities in the vicinity:⁴

	Name of Business	Name of Declarants
1.	Disnee Day Care	Leona Myers Miller
2.	B. B. Smith Rec.	B. B. Smith
3.	Evones Day Care	Evone H. Dickerson
4.	Beverage Depot	Belinda Deas
5.	Smith's ABC Store	Robert D. Smith
6.	Sampit Tax Service	M. R. Overby
7.	Smith's Grocery	Robert D. Smith
8.	Video Country	Eva M. Overby
9.	Sampit Housing	Charles E. Small, Jr.
10.	Family Convenience Store	Elizabeth Moultrie
11.	Value Mart	Shauntell Turner
12.	Brown Sugar's	Cathelean Grant

Sampit Civic Organizations. Attached hereto (Attachment 2) are declarations from the following seven individuals who represent civic organizations located in Sampit who say that they identify with Sampit and intend to serve the needs of Sampit residents as opposed to residents of other communities in the vicinity:

	Name of Organization	Declarants
1.	Sampit Community Organization	Samuel Wragg and Luechen Wragg
2.	Sampit Community Day Care	Sara B. Bryant
3.	Sampit Masonic Lodge #429	David Britton, Sr. and Nathaniel Smalls
4.	Senior Citizen Organization	David Wragg and Spencena Wragg

School. Sampit has an elementary school that identifies with the community and intends to serve the needs of Sampit residents as opposed to residents of other

⁴ Even though the declarants list their post office addresses as "Georgetown, S.C.," each attests to the nexus of their residence or organization with "Sampit."

communities in the vicinity. Attached hereto (Attachment 3) are 15 declarations from persons associated with Sampit Elementary School that support this.

Sampit Residents. The Commission (at *R&O*, ¶16) stated that it did not have statements or affidavits from actual residents of Sampit indicating that they perceive themselves to be part of the Sampit community. Attached hereto (Attachment 4) are declarations from 25 individuals who state that they perceive themselves to be members of the Sampit community.

Other Evidence of Community Status. Attachment 5 hereto is a letter from Gordon W. Hartwig, County Administrator of Georgetown County, South Carolina, that reaffirms his previous statements made to the FCC in his letter of October 17, 1995 (referred to in the *R&O*), and adds that "Sampit is a community that deserves to have its own radio station. Even the state of South Carolina some years ago installed signage on the major roads to designate the Sampit Community."

Attachment 6 hereto is a copy of a letter from Senator John Yancey McGill, a member of the South Carolina State Senate, who states:

The FCC is quite wrong in its conclusion that Sampit, South Carolina is not a community "for allotment purposes," i.e., to which a new FM channel may be assigned. Sampit is within my District, and I can assure the FCC that Sampit is a viable community. Sampit is a geographically identifiable population grouping. There are businesses, churches, an elementary school, and civic organizations that identify themselves with Sampit and as opposed to other communities in Georgetown County. Contrary to the FCC's opinion, Sampit is a community that deserves to have its own radio station. Sampit Broadcasters is willing to establish such a local station at Sampit, and I believe their request should be seriously considered by the FCC."

This outpouring of support rebuts the Commission's "belief" that Sampit is not a "community" for allotment purposes.

In light of the fact that the Commission in *Coker* had rejected the evidence of the existence of a post office as proving anything, the rejection of the sufficiency of SB's evidence on this basis created a "new and novel" legal test that SB had to meet. In the interest of due process,⁵ §1.429(b)(3) of the Rules provides that in a petition for reconsideration the petitioner may submit facts, consideration of which is the public interest. Under the well established standards of Section 307(b) of the Communications Act, the establishment of a first local transmission service is *per se* in the public interest. In a petition for reconsideration, the FCC has permitted such new evidence to be the basis of its reversal of its prior decision where it found to do so is in the public interest. For example, *see, Hannahs Mill, Georgia*, 7 FCC Rcd 3944, (Chief, Policy and Rules Division, 1992). Thus, in light of this evidence SB respectfully submits that SB has met the requisite test for establishment of the existence of Sampit as a "community" set forth in *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Services*, 5 FCC Rcd 934 (1990).

***Analysis of the Proposals
Under the FCC's FM Allotment Priorities***

⁵ "Whatever disagreement that may be as to the scope of the phrase 'due process of law,' there can be no doubt that it embraces the fundamental concept of a fair trial, with opportunity to be heard." *Frank v. Magnum*, 237 U.S. 309, 347 (1915).

In *R&O* [¶13], the Commission stated that it need not compare the Kiawah Island and Sampit proposals under its FM allotment priorities since it found both proposals to be technically and/or legally deficient. If the Commission affirms its decision not to reallocate Channel 288C2 to Kiawah Island, there will be no need to make such a comparison. However, SB notes that on August 19, 1996, LMC filed a petition for reconsideration of the *R&O*. Time for opposing that petition expires September 20, 1996 (15 days after public notice of the filing was given in the *Federal Register*, on September 5, 1996, 61 Fed. Reg. 46807). SB intends to address LMC's filing at the appropriate time, however, it should be noted that if the FCC grants both LMC's and SB's petitions, a comparison will become necessary. For that reason, SB offers additional information and legal argument that was not made at the comment stage of this proceeding because new precedent has been handed down in the interim. See, 47 C.F.R. §1.429(b)(1).⁶

If a comparison is made between Sampit and Kiawah Island, SB's proposal should be awarded a dispositive preference for bringing first local service to Sampit, while LMC's proposal must be found to be deficient as a 22nd service to Charleston, South Carolina. In *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (September 19, 1995), the Commission reminded interested parties that it would not blindly apply the first local service preference of the FM allotment priorities when a station seeks to reallocate a channel from a rural community to a suburban community of a nearby urban area. In light of this, the Commission began requiring stations seeking to

⁶ The date for filing comments and counterproposals in this docket was August 26, 1994. The new precedent referred to herein was released September 19, 1995.

move from rural communities to suburban communities located outside but proximate to Urbanized Areas to make the same showing required of stations seeking to move into an Urbanized Area if they would place a city-grade (70 dBu) signal over 50% or more of the Urbanized Area. Attachment 7 is a Technical Statement that shows that from LMC's initial reference point, a station would place a city-grade signal over 85% of the Charleston, South Carolina, Urbanized Area. LMC has not made a showing to the contrary; therefore, the Commission must treat the proposal for Kiawah Island as if it were a 22nd service to Charleston, rather than a first service to Kiawah Island.

In light of that, SB's proposal to allot a first local service to Sampit is greatly preferred to LMC's proposal. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

In summary, the Commission should reconsider its *R&O* and allot FM channel 289A to Sampit, South Carolina. The Commission's should not allot Channel 288C2 to Kiawah Island, South Carolina. That portion of the *R&O* should be summarily affirmed.

Respectfully submitted,

SAMPIT BROADCASTERS

By: 

Gary S. Smithwick
Its Attorney

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
(202) 785-2800
September 13, 1996

ATTACHMENT 1

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 15 day of Aug, 1996.

Signed: Leona M. Miller

Leona Myers Miller
Print Name

Disnee Day Care
Name of Business

Address: 495 Powell Dr

Georgetown SC 29440

(803) 527-8002

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 8th day of August, 1996.

Signed: 

B.B. SMITH
Print Name


Name of Business

Address: R1 Box 70

Georgetown, S.C. 29440

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 15 day of August, 1996.

Signed: Erone H. Dickerson

Erone H. Dickerson
Print Name

Erone's Day Care
Name of Business

Address: 8456 Penny Royal Rd
Georgetown, S.C. 29440

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 8th day of August, 1996.

Signed:

Belinda Deas

Print Name

Belinda Deas

Name of Business

Beverage Depot

Address:

Hwy 17A

Georgetown S.C.

29440

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.

2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.

3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 14th day of August, 1996.

Signed: Robert D. Smith

Robert D. Smith
Print Name

Smith's A.B.C. Store
Name of Business

Address: Rt 1 Box 60

Georgetown, SC. 29440

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 14TH day of AUGUST, 1996.

Signed: MR Overbey
M. R. OVERBEY
Print Name

SAMPIT TAX SERVICE
Name of Business

Address: 220 ST DELIGHT'S ROAD
GEORGETOWN, SC 29440

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 14th day of August, 1996.

Signed: Robert T. D. Smith

Robert T. D. Smith
Print Name

Smith's Grocery
Name of Business

Address: 358 St. Delight Rd.
Georgetown, S.C. 29440

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 14 day of Aug., 1996.

Signed: Eva m Overbey
EVA M. ORERBEY
Print Name

Video COUNTRY
Name of Business

Address: 220 St Delight Rd
Georgetown, S.C.
29440

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 14th day of August, 1996.

Signed: Mary Small
MARY S. SMALL
Print Name

Sampit Housing
Name of Business

Address: 50 Titmouse Drive
Georgetown, S.C.
29040

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 14 day of August, 1996.

Signed: Charles E. Small Jr.

Charles E. Small Jr.
Print Name

Sampit Housing
Name of Business

Address: 50 Titmouse Dr.

Georgetown, S.C. 29440

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 14 day of August, 1996.

Signed: Elizabeth Moultrie
Elizabeth Moultrie
Print Name
family Convenience Store
Name of Business
Address: Powell Rd
Rte 1 Box 344
Georgetown, S.C.
29440

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 14 day of August, 1996.

Signed: Shaunteel Turner

Shaunteel Turner
Print Name

Value Mart
Name of Business

Address: 1461 St. Delight Rd.
Georgetown, SC 29400

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I operate a business in Sampit, South Carolina, at the address written below my name. That business identifies with Sampit and intends to serve the needs of Sampit as opposed to other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this _____ day of _____, 1996.

Signed: Cathleen Grant

CATHELEAN GRANT
Print Name

Brown Sugar's
Name of Business

Address: R. 1 Box 79
Georgetown S.C.
29440

ATTACHMENT 2

DECLARATION

The undersigned, under penalty of perjury, declares as follows:

1. I am providing this declaration to Sampit Broadcasters with the understanding that it will be filed with the Federal Communications Commission in MM Docket 94-70.
2. I am Samuel WRA99 of a civic organization located in Sampit, South Carolina, at the address written below my name. That civic organization identifies with Sampit and intends to serve the needs of Sampit residents as opposed to residents of other communities in the vicinity.
3. I believe that a local radio station would be of great benefit to the residents of Sampit who now do not have any form of mass media for local expression. I urge the FCC to approve the proposal of Sampit Broadcasters to allot a new FM channel to Sampit.

Executed this 12th day of August, 1996.

Signed: Samuel WRA99

Samuel WRA99
Print Name

Sampit Community Organization
Name of Civic Organization

Address: 92 Singleton Ave
Georgetown, S.C. 29440